

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 918

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

AN ACT

RELATING TO CONTROLLED SUBSTANCES; PROVIDING A CIVIL PENALTY
FOR POSSESSION OF ONE OUNCE OR LESS OF MARIJUANA BY A PERSON
EIGHTEEN YEARS OF AGE OR OLDER; PROVIDING CIVIL FINES;
AUTHORIZING A COURT TO REFER A MINOR TO A DRUG COUNSELING
PROGRAM; AMENDING AND ENACTING SECTIONS OF THE CONTROLLED
SUBSTANCES ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Controlled Substances
Act is enacted to read:

"NEW MATERIAL POSSESSION OF ONE OUNCE OR LESS OF
MARIJUANA BY A PERSON EIGHTEEN YEARS OF AGE OR OLDER--
CITATION-- CIVIL FINE-- PROCEDURE. --

A. Upon an offense for possession of one ounce or
less of marijuana by a person eighteen years of age or older,

. 137642. 1

underscored material = new
[bracketed material] = delete

1 the arresting law enforcement officer shall offer the alleged
2 offender the option of accepting a citation for a three
3 hundred dollar (\$300) civil fine or appearing in metropolitan
4 or magistrate court within thirty days after issuance of the
5 citation to contest it. The violator's signature on the
6 citation constitutes an acknowledgment of guilt of the offense
7 stated in the citation.

8 B. If an offender elects to sign the citation,
9 payment of the civil fine shall be made by mailing the payment
10 or tendering the payment in person within thirty days from the
11 date of issuance of the citation to the metropolitan or
12 magistrate court. Payment of the fine is timely if postmarked
13 within thirty days from the date of issuance of the citation.
14 When a fine is paid by currency, a receipt shall be
15 immediately issued to the offender. When a fine is paid by
16 check, the canceled check is a sufficient receipt.

17 C. If an alleged offender elects to contest the
18 citation, he shall appear in metropolitan or magistrate court
19 within thirty days after issuance of the citation to contest
20 it. The citing law enforcement officer shall act as the
21 plaintiff during the proceedings. The citing law enforcement
22 officer shall be required to prove, by a preponderance of the
23 evidence, that the alleged offender was in possession of one
24 ounce or less of marijuana. If the court determines that the
25 alleged offender is guilty of the civil offense of possession

1 of one ounce or less of marijuana by a person eighteen years
2 of age or older, the court shall impose a civil fine of three
3 hundred dollars (\$300) and may require the offender to pay
4 court costs. When a fine is paid by currency, a receipt shall
5 be immediately issued to the offender. When a fine is paid by
6 check, the canceled check is a sufficient receipt.

7 D. The department of public safety shall prepare a
8 citation, to be used by law enforcement officers, for the
9 offense of possession of one ounce or less of marijuana by a
10 person eighteen years of age or older. The department of
11 public safety shall prepare a warning notice to be used by law
12 enforcement officers when a citation is not issued.

13 E. A record of payment of a civil fine for
14 possession of one ounce or less of marijuana by a person
15 eighteen years of age or older is not admissible as evidence
16 in a separate civil or criminal action; provided that the
17 record may be used to determine if a person has a prior
18 offense for possession of one ounce or less of marijuana by a
19 person eighteen years of age or older.

20 F. If the civil fine is not paid within thirty
21 days from the date of issuance of the citation, the offender
22 may be punished for contempt by the presiding metropolitan or
23 magistrate court, pursuant to the provisions of Sections 34-1-2
24 and 35-3-9 NMSA 1978.

25 G. A civil fine collected by a metropolitan court

1 or a magistrate court pursuant to the provisions of this
2 section shall be remitted to the state treasurer for deposit
3 into the general fund."

4 Section 2. Section 30-31-23 NMSA 1978 (being Laws 1972,
5 Chapter 84, Section 23, as amended by Laws 1990, Chapter 19,
6 Section 5 and also by Laws 1990, Chapter 33, Section 1) is
7 amended to read:

8 "30-31-23. CONTROLLED SUBSTANCES-- POSSESSION
9 PROHIBITED. --

10 A. It is unlawful for [~~any~~] a person intentionally
11 to possess a controlled substance unless the substance was
12 obtained pursuant to a valid prescription or order of a
13 practitioner while acting in the course of his professional
14 practice or except as otherwise authorized by the Controlled
15 Substances Act. It is unlawful for [~~any~~] a person
16 intentionally to possess a controlled substance analog.

17 B. [~~Any~~] A person less than eighteen years of age
18 who violates this section with respect to [~~(1)~~] one ounce or
19 less of marijuana is, for the first offense, guilty of a petty
20 misdemeanor and shall be punished by a fine of not less than
21 fifty dollars (\$50.00) or more than one hundred dollars (\$100)
22 and by imprisonment for not more than fifteen days, and, for
23 the second and subsequent offenses, guilty of a misdemeanor
24 and shall be punished by a fine of not less than one hundred
25 dollars (\$100) or more than one thousand dollars (\$1,000) or

1 by imprisonment for a definite term less than one year, or
 2 both. In addition to any punishment provided pursuant to the
 3 provisions of this subsection, the court may refer the
 4 offender to a drug counseling program administered by or
 5 approved by the department of health.

6 ~~[(2)]~~ C. A person who violates this section with
 7 respect to:

8 (1) more than one ounce and less than eight
 9 ounces of marijuana is guilty of a misdemeanor and shall be
 10 punished by a fine of not less than one hundred dollars (\$100)
 11 or more than one thousand dollars (\$1,000) or by imprisonment
 12 for a definite term less than one year, or both; or

13 ~~[(3)]~~ (2) eight ounces or more of marijuana
 14 is guilty of a fourth degree felony and shall be sentenced
 15 pursuant to the provisions of Section 31-18-15 NMSA 1978.

16 ~~[(C-)]~~ D. Except for those substances listed in
 17 Subsection ~~[(D)]~~ E of this section, ~~[any]~~ a person who violates
 18 this section with respect to any amount of any controlled
 19 substance enumerated in Schedule I, II, III or IV or a
 20 controlled substance analog of a substance enumerated in
 21 Schedule I, II, III or IV is guilty of a misdemeanor and shall
 22 be punished by a fine of not less than five hundred dollars
 23 (\$500) or more than one thousand dollars (\$1,000) or by
 24 imprisonment for a definite term less than one year, or both.

25 ~~[(D-Any)]~~ E. A person who violates this section

1 with respect to phencyclidine as enumerated in Schedule III or
2 a controlled substance analog of phencyclidine;
3 methamphetamine, its salts, isomers or salts of isomers as
4 enumerated in Schedule II or a controlled substance analog of
5 methamphetamine, its salts, isomers or salts of isomers; or a
6 narcotic drug enumerated in Schedule I or II or a controlled
7 substance analog of a narcotic drug enumerated in Schedule I
8 or II is guilty of a fourth degree felony and shall be
9 sentenced pursuant to the provisions of Section 31-18-15 NMSA
10 1978. "

11 Section 3. EFFECTIVE DATE.--This effective date of the
12 provisions of this act is July 1, 2001.